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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JAN -8 PM 3:45

JEANNE HICKS, CLERK

BY: J Adams

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF YAVAPAI

13 STATE OF ARIZONA

14 Plaintiff,

15 vs.

16 STEVEN CARROLL DEMOCKER,

17 Defendant.

) No. P1300CR20081339

) Division 6

) **DEFENDANT'S REPLY IN**
) **SUPPORT OF MOTION *IN***
) ***LIMINE* TO EXCLUDE POLICE**
) **OFFICERS FROM TESTIFYING**
) **AS EXPERTS**

19 The State responds that it does not intend to offer expert opinions from law
20 enforcement but will limit law enforcement opinions to those permissible under Arizona
21 Rule of Evidence 701; that is, opinions limited to those based on the personal
22 *perception of the witness* and helpful to a clear understanding or the determination of a
23 fact in issue. See Arizona Rule of Evidence 701. The Court should therefore grant Mr.
24 DeMocker's motion and prohibit the State from offering testimony involving
25 "scientific, technical or other specialized knowledge" as governed by Rule 702 from
26 any law enforcement officer not presently designated by the State as an expert in a
27 particular area.
28

1 Arizona Rule of Evidence 702 provides that only an expert who is qualified may
2 testify about a matter of "scientific, technical or other specialized knowledge" that will
3 assist the trier of fact to understand the evidence or to determine a fact in issue. Ariz. R.
4 Evid. 702. Under Rule 701, when a witness is not an expert, his testimony is "*limited* to
5 those opinions or inferences which are rationally based on the perception of the
6 witness" and "helpful to a clear understanding of the witness' testimony or the
7 determination of a fact issue." Ariz. R. Evid. 701. All law enforcement testimony
8 should therefore be limited to matters the law enforcement officer personally perceived
9 and should not be related to scientific, technical or other specialized knowledge.

10 Specifically, the State should be instructed that it will not be permitted to offer
11 testimony regarding forensic computer examinations from Detective Steve Page
12 including testimony about examination results of "keyboard searches," EnCase reports
13 or "NetAnalysis" examinations. This testimony is about a matter of "specialized
14 knowledge" and is therefore governed by Arizona Rule of Evidence 702 and may only
15 be given by a qualified expert. Detective Page is not a qualified expert. The Court
16 should further instruct the State that it will not be permitted to offer these opinions
17 under Rule 701 as they are not "rationally based on the perception" of Detective Page
18 and because they are based on "specialized knowledge" and are therefore properly the
19 subject of expert testimony.

20 Likewise, because the State has acknowledged that Detective John McDormett is
21 not an expert on crime scene analysis, blood spatter, psychology, tax fraud, materials
22 resilience, bike tire comparison, or forensics it should be instructed that it will not be
23 permitted to elicit any testimony from Detective McDormett regarding these matters.
24 These matters are all related to scientific, technical or specialized knowledge. The
25 Court should prohibit Detective McDormett from testifying regarding scene staging,
26 movement of the victim's body, blood spatter, bike tire impression comparisons, the
27 force of the blows to Ms. Kennedy, the direction the blows were made by the attacker,

1 that the attack indicated "rage" of the attacker, that rage is suggestive of a relationship
2 between victim and attacker, that Ms. Kennedy was attempting to reason with her
3 attacker, about Mr. DeMocker's alleged "tax fraud," that Mr. DeMocker's response to
4 learning of Ms. Kennedy's death was "odd," that a golf club would be intact after
5 inflicting the trauma Ms. Kennedy suffered or any other matter that is the proper subject
6 of expert testimony. This testimony is not possible based on the personal perceptions of
7 Detective McDormett and the State should therefore be prohibited from offering his
8 testimony about it.

9 Additionally, the State has acknowledged that Officer Doug Brown is not an
10 expert in DNA, forensics, tire or shoeprint impression comparison, forensic pathology,
11 blood spatter or crime scene reconstruction and analysis. This court should therefore
12 instruct the State that it may not elicit any testimony from Officer Brown regarding
13 DNA evidence, money allegedly being hidden by Mr. DeMocker, bike and tire track
14 comparison, a speculated murder weapon, the nature of any injuries to the victim, scene
15 staging, or blood spatter. These matters are of "scientific, technical or other specialized
16 knowledge." They are also not based on the personal perception of Officer Brown.

17 Lastly, the State should be instructed that Sergeant Dan Winslow will not be
18 permitted to testify his opinions regarding bike tire impression comparisons. Bike tire
19 comparison is a matter of specialized knowledge. Sergeant Winslow is not an expert in
20 bike tire impression comparison and has not been so designated by the State.

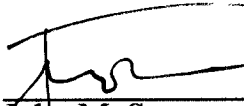
21 Specific instructions from the Court are required because the State has repeatedly
22 offered testimony and evidence from these officers that does not comply with the limits
23 of Rule 701 and is rather the proper subject of expert testimony. Misleading testimony
24 regarding forensic evidence is particularly prejudicial to Mr. DeMocker. As cited in
25 Mr. DeMocker's original motion, the National Academy of Sciences found that juries
26 and the Court can be misled by forensic testimony, leading to wrongful convictions or
27 exonerations. "Strengthening Forensic Science in the United States: A Path Forward."

1 <http://www.nap.edu/catalog/12589.html> at 1-2. The Court should grant Mr.

2 DeMocker's motion and specifically instruct the State to prevent it from attempting to
3 elicit expert testimony from witnesses who are not qualified or attempting to improperly
4 claim that non-expert witnesses will testify regarding matters of scientific, technical or
5 other specialized knowledge, which is not permitted by Rule 702.

6 DATED this 8th day of January, 2010.

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8 By:


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15 **ORIGINAL** of the foregoing filed
this 8th day of January, 2010, with:

16 Jeanne Hicks
17 Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
18 Prescott, AZ 86303

19 **COPIES** of the foregoing hand delivered
20 this 8th day of January, 2010, to:

21 The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six
22 120 S. Cortez
23 Prescott, AZ 86303

24 Joseph Butner, Esq.
25 Office of the Yavapai County Attorney
Prescott courthouse basket

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